

No. 99-2571

PER CURIAM.

Reginald Early, an Arkansas inmate, appeals from the order of the District Court¹ dismissing his 42 U.S.C. § 1983 action against several correctional officers at the Cummins Unit of the Arkansas Department of Correction ("ADC") and against both the director and the warden of that unit. Early alleged that, while he was confined in punitive isolation, one of the correctional officers sprayed him with Cap Stun pepper spray and then left him unattended in his cell for twenty minutes; that the other two correctional officers saw the spraying, but failed to remove Early from his cell as he asked; and that the director and the warden refused to investigate the incident and to take appropriate action against the officers. Early sought compensatory and punitive damages.

Magistrate Judge Young held an evidentiary hearing and then issued a report containing his recommended findings of fact and also a recommendation that Early's complaint be dismissed. After de novo review, the District Court adopted the recommended findings and dismissed the case.

For reversal, Early argues that subsequent discipline of the correctional officer for his use of Cap Stun in this situation establishes that he acted maliciously and that the court's findings of fact are clearly erroneous. Having reviewed the case, we reject Early's contentions. The evidence adduced at the evidentiary hearing provides substantial support for the court's findings of fact, and we thus cannot say that any of those findings are clearly erroneous. The facts as found necessarily lead to the rejection of Early's constitutional claims, because such facts do not support an inference that any of the defendants acted with malice or were deliberately indifferent to Early's plight. Although the discipline imposed upon the correctional officer as a result of his

¹The Honorable JAMES MAXWELL MOODY, United States District Judge for the Eastern District of Arkansas, adopting the report and recommendation of the Honorable H. DAVID YOUNG, United States Magistrate Judge for the Eastern District of Arkansas.

use of Cap Stun against Early establishes that his use of Cap Stun was not justified under ADC policy, this is insufficient to show that the correctional officer acted in a way that violated the Constitution. Moreover, as found by the District Court, any suffering that Early experienced as a result of the use of the Cap Stun was not severe. Accordingly, the judgment of the District Court dismissing Early's complaint is affirmed, essentially for the reasons stated in the report and recommendation of the Magistrate Judge. See 8th Cir. R. 47B. Early's motion for appointment of counsel is denied.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.